

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOHN L. DYE, JR.,

Plaintiff,

v.

BRYAN BARTOW, MARY KLEMZ,
CATHY A. JESS, LARRY JENKINS,
ROBERT HUMPHREYS, GAANAN,
BARBARA WAEDEKIN, THERESA BARWELL,
THOMAS MICHLOWSKI, STEVE SPANBAUSE,
MARY VANDE SLUNT, CHARLES FACKTOR,
CINDY O'DONNELL, EDWARD F. WALL,
LOYDA LORIA, and JOHN DOES,

Defendant.

ORDER

13-cv-284-bbc

Judgment was entered in this case on July 15, 2013, denying plaintiff John Dye leave to proceed and dismissing the case for plaintiff's failure to state a claim on which relief may be granted. More specifically, Judge Crabb concluded that plaintiff's Eighth Amendment rights were not being violated by his being forced to use a short-handled toothbrush despite having a "chronic mallet deformed right thumb" because there was no reason to believe that plaintiff needed to use his right hand to brush his teeth.

Plaintiff responded by filing a motion to alter or amend judgment under Fed. R. Civ. P. 59, including an argument that he had new allegations regarding his arthritis that would support a proper Eighth Amendment claim. Dkt. #11. He also filed a notice of appeal. Dkt. #12.

In a September 19, 2013 order, Judge Crabb granted the Rule 59 motion and vacated the judgment, stating that "it now seems possible that, with a properly amended complaint, plaintiff may be able to state claims upon which relief may be granted." Dkt. #18. Additionally, Judge Crabb stated that the court would not issue further rulings until the court of appeals disposed of the appeal.

Now that the court of appeals has dismissed the appeal, dkt. #20, the case may proceed in this court. The next step for plaintiff is to submit an amended complaint incorporating his allegations about arthritis and any other information that would support his Eighth Amendment claims. I will give him a short deadline to do so.

ORDER

It is ORDERED that plaintiff John Dye may have until March 28, 2014 to submit an amended complaint more fully detailing his Eighth Amendment claims. If plaintiff fails to submit an amended complaint by the deadline, the court will dismiss the case for plaintiff's failure to state a claim upon which relief may be granted.

Entered this 7th day of March, 2014.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge